



FAIR POLITICAL PRACTICES COMMISSION

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May 20, 2010

Mr. Brooks Firestone

REDACTED

Warning Letter RE: FPPC No. 07/019; Brooks Firestone

Dear Mr. Firestone:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code section 81000, et seq. This letter is in response to a sworn complaint filed against you that alleged you were in violation of the Act's conflict of interest and Statement of Economic Interests (SEI) disclosure requirements. Specifically, the complaint alleged that you, while serving as a Santa Barbara County Supervisor, violated the conflict of interest provisions of the Act by participating in the discussion of and voting on amendments to the "Uniform Rules" of Santa Barbara County; by participating in a decision involving the Santa Ynez Valley Community Plan Update; and by voting on the receipt of a staff report on an oil spill involving Greka Energy Company within the County. It also alleged that you failed to disclose personal real property interests and, separately, income from Greka Energy Corporation on your calendar year 2004, 2005 and 2006 SEIs.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that you failed to disclose several parcels of real property on your 2004, 2005 and 2006 SEIs. You also failed to disclose income from Greka Energy Corporation. However, you did provide full disclosure of all assets on your 2007 SEI. We also found that you participated in a community forum on amendments to the Uniform Rules and voted on two occasions to continue the discussion of the "Uniform Rules" by the Board of Supervisors to a future meeting. With regard to the Santa Ynez Valley Community Plan Update, we found that you were absent for the first meeting at which it was on the agenda, and recused yourself at the second meeting where the issue was heard.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

You also voted to not receive a staff report on an oil spill involving Greka Energy Company. At that same meeting, County staff was given direction to bring back a more detailed staff report and additional information concerning Greka at a future meeting. In both the "Uniform Rules issue and the Greka issue, after your initial votes, you recused yourself from any further consideration of these issues at future meetings.

The Act prohibits public officials, which includes county supervisors, from making, participating in making or influencing governmental decisions in which the official has a material financial interest. Specifically, Section 87100 of the Act states: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

To determine whether a public official has a disqualifying conflict of interests, the FPPC generally employs the following sequenced analysis: 1) was the individual a public official; 2) did the official make, participate in making, or use or attempt to use his official position to influence a governmental decision; 3) what are the public official's economic interests; 4) was the economic interest affected by the decision, either directly or indirectly; 5) was the economic interest materially affected by the decision; 6) was it reasonably foreseeable that the economic interest would be materially affected by the decision; 7) was the reasonably foreseeable financial effect distinguishable from the effect on the public generally. (See FPPC Regulation 18700.) A public official is not influencing a governmental decision if the official communicates with the general public or press. (FPPC Regulation 18702.4(b)(2))

Additionally, the Act requires that every person who holds an office as specified in Government Code Section 87200 file an annual statement disclosing his investments, his interests in real property and his income. (Government Code Section 87203) County Supervisors are included within the offices delineated in Government Code Section 87200.

Your actions violated the Act because you failed to report several parcels of property, and income from Greka Energy Company, on your 2004, 2005, and 2006 SEIs. However, you did report these properties on your 2007 SEI, and you are no longer serving as a Santa Barbara County Supervisor. Due to these mitigating circumstances, we have decided to close this case with a warning letter.

Your actions with regard to voting to continue discussions on the Uniform Rules amendments, however, did not violate the Act. There is no evidence to indicate that the votes to continue the Uniform Rules amendments had any material financial effect on the value of your property or businesses, one of the required elements to find a conflict of interest under the Act. Your actions to hold a community forum on the Uniform Rules did not violate the Act because

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The Act does not consider direct communication with the public to be "influencing" a governmental decision.

Similarly, your actions with regard to voting to not receive a staff report on the Greka Energy Company oil spill did not violate the Act. There is no evidence to indicate that the vote to not accept the staff report, particularly when coupled with the directions to staff for a more comprehensive report and information and your future recusal from decisions on this issue had a material financial effect on the value of Greka Energy Company, one of the required elements to find a conflict of interest under the Act.

Lastly, you were not present at the first meeting where the Santa Ynez Valley Community Plan Update was on the agenda and recused yourself at the second meeting where the item was on the agenda. Therefore, your actions with regard to this item did not result in your influencing, participating or making a governmental decision and, thus did not violate the Act.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED

GARY S. WINUK
Chief, Enforcement Division

cc: Frank Blundo, Robert Field, Cameron Benson